Court No. 2

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

A.O. No. 193 of 2004

The United India Insurance Company Ltd.,
Branch Kashipur through Divisional Manager,
Haldwani, District - Nainital

..... Appellant.

Versus

(1)Sri Mohamad Sayeed S/o Abdul Hameed,
R/o Village and Post Sultanpur Patti,
Tehsil-Bajpur, District Udham Singh Nagar.

(2)Sri Naeem Khan S/o Shri Raees Khan,
R/o Village and Post Sultanpur Patti,
Truck/Canter No.DL- 1 L/0168,
District Udham Singh Nagar.

..... Respondents.

.....

Sri D.S.Patni, learned counsel for the appellant.
None for the respondents.

Date: 31th August., 2004.

Hon'ble P.C.Verma,J.
Hon'ble B.S.Verma,J.

This appeal has been preferred by the United India Insurance Company Ltd. under Section 30 of the Workmen's Compensation Act, 1923, against the judgment and award dated 15.04.2004 passed by the Workmen's Compensation Commissioner/Assistant Labour Commissioner, Udham Singh Nagar, Rudrapur in Workmen's Compensation Claim Case No.05 of 2002, Sri Mohamad Saeed versus Sri Naeem Khan and another, whereby the Workmen's Compensation Commissioner awarded the total compensation of Rs. 2,58,330/- to the claimant against the United India Insurance Company Ltd.

2- Brief facts giving rise to this appeal are that Mohd.Yaseen-son of the applicant/claimant was in the employment of Opp.party No.1 as cleaner in Truck/Canter No. DL-1L-0168. On 04.03.2002 during the course of employment he suffered injuries in an accident and died on 11.3.2002 while he was getting treatment. He was about 23 years of age at the time of accident and was getting Rs. 3000/- per month as salary.

3- The Opp.party No.1 owner of the offending truck filed his written statement admitting the death of Mohd. Yaseen in the said accident. He also admitted that the deceased was under his employment as cleaner at the time of accident. He stated that the said truck was insured with United India Insurance Company at the time of accident. The Opp.party No.2 - United India Insurance Company filed its written statement denying all the allegations made in the claim petition. The learned Workmen's Compensation Commissioner after scrutinising the evidence adduced by the parties granted the compensation of the claimant accordingly. Feeling aggrieved, the Insurance Company has come up in this appeal.

4- The learned counsel for the appellant contended that the findings given by the learned Workmen's Compensation Commissioner in the impugned award fixing the liability of the compensation upon the appellant-Insurance Company are contrary to the evidence as the claimant failed to prove that the deceased died during the course of employment. We have gone through the material on record and perused the impugned award. The learned Commissioner gave its finding that the Opp.party No.1 on 26.8.2003 deposed on oath that he is the registered owner of canter No. DL-1L-0168. On the ill fated day i.e. 04.3.2002 Sri Afroj Khan was posted as driver and

Mohd.Yaseen was posted as cleaner on the said vehicle Canter. The accident took place while the said Canter was returning from Lucknow. Cleaner Mohd. Yaseen sustained injuries in the said accident and died during treatment on 11.3.2002. He further deposed that he was paying Rs. 2500/- as monthly salary to the deceased. He also filed the documentary evidence relating to the vehicle which show that the said vehicle was insured and the driver was having a valid driving licence at the time of accident. We find that the learned Commissioner on the basis of the evidence of the parties and according to the report of post mortem held the age of the deceased as 23 years and the monthly income of the deceased and calculated the amount of compensation. We find no reason to interfere with the finding of the learned Commissioner. The learned counsel for the appellant further contended that the learned Commissioner has awarded Rs. 27,678/-/- as interest on the amount of compensation at the rate of 12% per annum which is excessive and submitted that the rate of interest should be reduced. We find some force in the said contention and hold that the rate of interest as held by the learned Commissioner is excessive which is reduced. The Insurance Company shall pay the amount of compensation alongwith interest at the rate of 8% (eight per cent) per annum. Thus, the claimant is entitled to get Rs.2,30,652/- as compensation alongwith interest at the rate of 8% per annum.

5- The appeal is partly allowed. The impugned award is modified accordingly.

(B.S.Verma,J.) **(P.C.Verma,J.)**

31.08.2004
P.Singh